

Meeting of 2009-7-28 Regular Meeting

MINUTES

LAWTON CITY COUNCIL REGULAR MEETING
JULY 28, 2009 6:00 P.M.
WAYNE GILLEY CITY HALL COUNCIL CHAMBER

Mayor Pro Tem Doug Wells Also Present:
Presiding Larry Mitchell, City Manager
 Tim Wilson, Assistant City Attorney
 Traci Hushbeck, City Clerk

COL Ray Lacey, Fort Sill Liaison.

Mayor Pro Tem Wells called the meeting to order at 6:00 p.m. Notice of meeting and agenda were posted on the City Hall notice board as required by law. Invocation was given by Reverend Terry Koehn, St. Pauls United Methodist Church, followed by the Pledge of Allegiance.

ROLL CALL

PRESENT: Bill Shoemate, Ward One
James Hanna, Ward Two
Janice Drewry, Ward Three
Jay Burk, Ward Four
Robert Shanklin, Ward Five
Richard Zarle, Ward Six
Stanley Haywood, Ward Seven

ABSENT: None

ROLL CALL

AUDIENCE PARTICIPATION:

Sharon Cheatwood, Arts and Humanities Division, stated this year they are partnering with the Lawton Arts and Humanities Council to present a free concert for the Lawton Birthday Celebration to be held on Saturday, August 1st at 7:00 p.m. at Elmer Thomas Park.

CONSENT AGENDA: The following items are considered to be routine by the City Council and will be enacted with one motion. Should discussion be desired on an item, that item will be removed from the Consent Agenda prior to action and considered separately.

Mayor Pro Tem Wells stated item #14 needs to be stricken from the agenda.

MOVED by Drewry, SECOND by Hanna, to approve the Consent Agenda with the exception of item #14. AYE: Hanna, Drewry, Burk, Shanklin, Zarle, Haywood, Wells, Shoemate. NAY: None. MOTION CARRIED.

Mayor Pro Tem Wells requested that in the future, maps be made available for the mowing areas in items #18, #19 and #20 rather than a written description.

Mitchell stated the maps will be placed in the councilmembers boxes.

1. Consider the following damage claims recommended for approval and consider passage of the resolution authorizing the City Attorney to file a friendly suit for the claims which are over \$400.00: Drex and Hedi Thomas in the amount of \$800.00 (**Res. 09-76**), Emmy Apple in the amount of \$173.54, Jacquelyn Cunningham in the amount of \$97.50 and William Thomas Robison in the amount of \$130.08. Exhibits: Legal Opinions/Recommendations, Resolution No. ____.
2. Consider the following damage claims recommended for denial: Mike and Deborah Sanfellipo in the amount of \$200.00 and Ralph Conerly in the amount of \$220.00. Exhibits: Legal Opinion/Recommendation.
3. Consider adopting a resolution approving the settlement by a joint petition and making payment in the pending

4. Consider approval of the Retainer Agreement for Legal Services between the City of Lawton and McAFEE & TAFT and authorize the Mayor and City Clerk to execute the Agreement. Exhibits: Retainer Agreement for Professional & Legal Services on file in City Clerk s Office.

5. Consider renewing the professional services agreement with Mackey Law Firm, to provide professional property research services to the City of Lawton, and authorize the Mayor and City Clerk to execute the Agreement. Exhibits: Proposed Agreement is on file in the City Clerk s Office.

6. Consider approving an Agreement between the Spirit of Survival Marathon and the City of Lawton to fund activities by the Marathon designed to encourage, promote and foster tourism and economic development in the City of Lawton, and authorize the Mayor and City Clerk to execute the Agreement. Exhibits: Proposed Agreement with Attached Budget.

7. Consider approving an Agreement between the Lawton Community Theater and the City of Lawton to fund activities by the Theater designed to encourage, promote and foster tourism and economic development in the City of Lawton, and authorize the Mayor and City Clerk to execute the Agreement. Exhibits: Proposed Agreement with Attached Budget.

8. Consider approving an Agreement between the Historical Association of the Lawton Rangers, Inc., and the City of Lawton to fund activities by the Association designed to encourage, promote and foster tourism and economic development in the City of Lawton, and authorize the Mayor and City Clerk to execute the Agreement. Exhibits: Proposed Agreement. Budget will be distributed to the City Council at the meeting.

9. Consider approving contract with Journey Productions for technical support services for the 2009 International Festival for September 21-29, 2009. Exhibits: Contract on file in City Clerk s office.

10. Consider ratifying the actions of the Public Works Director/City Engineer and approving an agreement with Zia Corporation, Inc. for professional engineering services for an underground storage tank removal/closure related to the NW 2nd Street Enhancement Project #2005-12. Exhibits: None.

11. Consider approving a part time Civil Engineer position for CIP projects and authorizing funding. Exhibits: None.

12. Consider authorizing staff to receive proposals from environmental, energy management and engineering firms for a Landfill Gas Collection and Control Services Agreement. Exhibits: None.

13. Consider accepting the sanitary sewerline, permanent utility easement, and maintenance bond serving Walgreens at SW 12th Street and Lee Boulevard; approving the record plat of Lot 1R, Block 37, Waldman Addition, a Replat of Lots 1 6 and a portion of Lots 7 12, Block 37, Waldman Addition; and granting a revocable permit for maneuvering on the utility easement. Exhibits: Plat Map and Revocable Permit. Utility Easement and Maintenance Bond on file in City Clerk s Office.

14. Consider accepting water and sanitary sewer lines to serve the car dealership located at NW 72nd Street and Quanah Parker Trailway and maintenance bond and consider granting a revocable permit for parking and maneuvering on the permanent utility easement. Exhibits: Location Map. Revocable Permit and Maintenance Bond on file in City Clerk s Office. **THIS ITEM WAS STRICKEN FROM THE AGENDA.**

15. Consider approving the application for a Lease-Purchase Agreement for the construction of approximately 1,645 linear feet of 12 diameter water main located along the north side of SW Bishop Road west of SW 52nd Street. Exhibits: Application for Lease-Purchase Agreement.

16. Consider rejecting the bid proposal received for the Intermodal Transportation Museum Project (F.A. Project No. STP-116E(130)EH) and authorize staff to re-advertise the project following approval by the Oklahoma Department of Transportation. Exhibits: Project Site Plan, Photo of Elgin Depot building. Plans and specifications are on file in the Planning Division office.

17. Consider extending the contract (CL09-001) Copper and Brass items 1-107 with Oklahoma Contractor s

Supply of Oklahoma City, OK. Exhibits: Department Recommendation, Price Sheet, Contract Extension Form.

18. Consider awarding (CL10-005) Mowing Contract for Areas M and N to Pair Mowing Contractors, of Lawton, OK. Exhibits: department recommendation, abstract of bids.

19. Consider awarding (CL10-005) Mowing Contract for Area O to Teen Challenge of Oklahoma, of Cache, OK. Exhibits: department recommendation, abstract of bids.

20. Consider awarding (CL10-005) Mowing Contract for Area P to L C Lawn Care of Altus, OK. Exhibits: department recommendation, abstract of bids.

21. Consider awarding (CL09-051) Precast Concrete Manholes to Nance Precast Concrete Product of Piedmont, OK. Exhibits: department recommendation, abstract of bids.

22. Consider approval of payroll for the periods of July 13 - 26, 2009.

NEW BUSINESS ITEMS:

23. Hold a public hearing and consider adopting an ordinance amending Section 18-6-11-611, Chapter 18, Lawton City Code, 2005, by adding sales of new automobiles as a permitted use in C-4 (Tourist Commercial District) and declaring an emergency. Exhibits: Ordinance No. 09-____.

Richard Rogalski, Planning Director, stated there have been some discussions about where new automobile sales would be located. It was noted that while they were allowed in the C-3 and C-5 zones, they were not allowed in the C-4 zone. The C-4 zone is Tourist Commercial District but it is also looked at as being highway commercial which they felt would be an appropriate use. Currently, the Lawton City Code allows the sale of new automobiles in C-3 (Planned Community Shopping Center District), C-5 (General Commercial District), I-1 (Restricted Manufacturing and Warehouse District), I-3 (Light Industrial District), and I-4 (Heavy Industrial District) as permitted uses. The sale of new automobiles is allowed in the Central Business District as a use.

PUBLIC HEARING OPENED.

Mike Rentchell, Jim Norton Toyota of Lawton, stated they closed on the franchise June 6th and they were under the impression that they could sell Toyotas at that location.

Mayor Pro Tem Wells stated that the council agrees with this change.

PUBLIC HEARING CLOSED.

MOVED by Drewry, SECOND by Hanna, to adopt **Ordinance 09-23**, waive the reading of the ordinance, read the title only and declare an emergency. AYE: Drewry, Burk, Shanklin, Zarle, Haywood, Wells, Shoemate, Hanna. NAY: None. MOTION CARRIED.

(Title read by City Attorney)

Ordinance 09-23

An ordinance pertaining to zoning amending section 18-6-11-611 of the Lawton City Code, 2005, by adding sales of new automobiles as a permitted use in C-4 Tourist Commercial District; providing for severability; and declaring an emergency.

24. Discuss and consider adopting a Council Policy on the advertising of vacant positions within the City of Lawton and take appropriate action if necessary. Exhibits: None.

Mayor Pro Tem Wells stated the purpose of this request is to try to cut down on the expense of advertising and bringing people in from out of state for interviews and moving expenses. He feels they need a policy that says that we will only advertise most positions on the website and in the Lawton Constitution. They will not restrict anyone from applying from anywhere. The exceptions could be the positions of the City Manager, Assistant City Manager and engineers. City Attorneys and paralegals could be limited to in state only. He would like to see a council policy developed.

Shoemate questioned why we would limit ourselves because we want to go after good candidates.

Mayor Pro Tem Wells stated this would cut down on advertising expenses. Why would they advertise all over the country for positions when they have good people in house and from Lawton. He has heard complaints from employees who say they do not want to improve themselves because they don't have a chance to move up because we go outside the city to hire people.

Burk questioned how much we spend on advertising per year.

Mitchell stated that would depend on what positions are open. He stated they do limit advertising outside the local market to the positions that Mayor Pro Tem Wells has mentioned. He stated they have had planner positions open for almost two years and they just can't find those types of people in the local market. He stated if they are to be competitive and are asking people to interview with us who have the education and professional experience then they have to do some of this. They do try to limit this.

Shoemate questioned if the Oklahoma Municipal League assists us.

Mitchell stated we advertise in their monthly newsletter which is a free service.

Drewry questioned what publications we are using that are costing so much?

Wells stated he would like to see us develop a policy on what positions will be advertised.

MOVED by Wells, SECOND by Shanklin, to request staff to develop a policy on advertising vacant positions within the City of Lawton. AYE: Burk, Shanklin, Zarle, Haywood, Wells, Shoemate, Hanna, Drewry. NAY: None. MOTION CARRIED.

25. Consider a request for a revocable permit for placement of a subdivision entry sign and ornamental wall on a utility easement located at 6901 NW Silver Creek Circle. Exhibits:

Location Map, Application. Revocable Permit on file in City Clerk's Office.

Rogalski stated an application has been submitted for a revocable permit to allow a sign with a waterfall and ornamental wall at the entrance to Silver Creek Patio Homes Addition on Lot 27, Block 1, addressed as 6901 NW Silver Creek Circle by Woon Chang, Success Construction. The sign and wall have already been constructed. It has been there approximately four years. An application for a building permit for the sign and wall was denied in 2005 because they would be located in the utility easement and crossing directly over the sewer line in two places.

Section 20-101D.1 of the Lawton City Code provides that Council may authorize certain encroachments within utility easements, but only when located a minimum of ten (10) feet from a sanitary sewer main. Therefore, city code does not allow for approval of this request. This request was forwarded to the Public Works Department and the franchise utility companies for comment. The Public Works Department commented that any structures located over a sewer main will greatly inhibit maintenance of the sewer main and therefore recommended denial of the revocable permit. AEP does not object to the granting of the revocable permit but is concerned about the safety of the existing electrical service to the pump for the waterfall and sign. The conduit is mounted on the fences of the residential homes running from a house meter base north of the sign. Mr. Chang has indicated that he intends to correct the electrical system. He stated that staff is recommending denial.

Hanna questioned why a stop work order was not issued when they continued to build the wall after the permit was denied.

Rogalski stated City staff did not realize that the wall was under construction. At the time it was built, the sewer had been constructed, the roads were done and the inspector was gone. They never did notice that it was even there.

Burk stated he is aggravated that others have come before the City Council and they have made them go back and go through the process. Here they sit with someone who knew that it was not right to construct this wall yet they went ahead and did it. If they had every builder in town doing this they would be in a big mess.

Zarle stated there is not one week that goes by that he does not get a call because someone's fence has been taken down for sewer rehab projects. He would like to see them start sticking to some of the rules and regulations and make it easier on staff to go by the book.

Woon Chang, 6909 NW Maple Drive, stated he did tell the inspectors that he had to build an entry sign and he was told he could not. The inspector did not give him any indication on what he needed to do. When the City Council established the code allowing for revocable permits, the wall was already being constructed. He has been in the business since 1987 and he has contributed to many improvements in Lawton and he is not the type of person to go against the city code. He stated the line is less than 100 feet and he sees no problem with the wall being removed if work needed to be done. He stated the homeowners association would remove the wall at no cost to the City of Lawton.

Burk questioned if Mr. Chang would be willing to put that in writing that the removal cost would be paid by the homeowners association.

Mr. Chang stated yes.

Burk questioned if there was something in writing that denied the construction of the wall.

Mr. Change stated no, it was just verbal.

Shanklin stated the sign looked nice and they understand that they will take it down if they have to work on that line.

Mayor Pro Tem Wells stated they cannot approve a revocable permit under the current code. A ordinance will have to come back to the City Council.

Wilson stated the city code does say the sign would not be eligible if it is within 10 feet of the sanitary sewer main and in this case it goes over the main in two spots. Legally, this is not eligible for action by the City Council.

Shanklin stated this is an enhancement to the area and he does not feel that tearing it down is the right way to handle this. They should bring it back and change it.

Mitchell suggested they deny the permit and if crews have to go in and repair the line they will remove it. They can deny the permit and still have access if they need to get in there. He stated it would be nice to have a letter from the homeowners association.

Hanna questioned if they could get a letter to place on file from the homeowners association stating they will take the wall down if needed.

Mr. Change stated yes he could get a letter to the City Manager tomorrow.

Shoemate stated that every meeting someone comes in here and they have built a fence, gazebo, boat dock, etc. over the easement. At some point they need to put their foot down.

Burk stated that we have. Some of the builders have told him that they have had to do some things to stay out of the easements. He stated Mr. Change has done some wonderful work, but he wished that they had been able to work some things before he built over the sewer line.

Mr. Change stated this was done unintentionally and it was confusing.

Mayor Pro Tem Wells stated they need to make sure that the inspectors know what is permitted and they need to stop this before it gets this far.

Frank Jensen, City Attorney, stated from a legal standpoint, he does not agree with the City Manager's recommendation. That revocable permit is not eligible, but if the City Council is going to allow the structure to stay, that revocable permit protects the City of Lawton and requires the property owner to remove the structure at their cost. There is no sense in having a letter from the association because that is not a contract.

Wilson stated that would mean they have to amend the ordinance.

Mayor Pro Tem Wells stated the reason this has come up is because Mr. Change wants to run electricity and he applied for a permit.

Shanklin stated he wants to bring this back and have staff reword it so that they can allow for a revocable permit.

MOVED by Shanklin, SECOND by Haywood, to bring this back to the City Council with an amendment to the ordinance to allow this action.

Drewry questioned what type of action.

Wilson stated he understood this to mean that this type of structure would be allowed within 10 feet of a sewer main.

Shanklin stated that is not what a revocable permit is.

Mayor Pro Tem Wells stated if they amend the code for this one, they have to amend the code to say that anyone can build within the ten feet.

Jerry Ihler, Public Works Director, stated from a legal standpoint they are not allowed to do this. He would prefer the City Manager's recommendation. He is greatly opposed to changing the code to allow everyone to build over the top of the sewer line. They need to come up with some kind of an avenue to allow this one to occur without

allowing this to continue. He does not know what that is.

Shanklin stated he agrees. He is in the right of way if and we need to get in there we just go in and bulldoze it down.

Tim Hushbeck, PSO-AEP, stated he agrees with Mr. Ihler and it would also cause PSO huge problems if the code is changed.

Shanklin stated he would prefer a revocable permit.

Mayor Pro Tem Wells stated they cannot do that under the current ordinance.

SUBSTITUTE MOTION by Drewry, SECOND by Burk to deny the request for a revocable permit. AYE: Zarle, Haywood, Wells, Shoemate, Hanna, Drewry, Burk. NAY: Shanklin. MOTION CARRIED.

Mayor Pro Tem Wells stated item #26 has been stricken from the agenda.

26. Consider authorizing the Fire Department to accept the Federal SAFER Grant (Staffing for Adequate Fire & Emergency Response), which provides match based funding to assist with additional firefighter positions in local fire departments and if accepted, would provide 12 new entry-level firefighter positions to the Lawton Fire Department. Exhibits: SAFER Grant Overview. **THIS ITEM WAS STRICKEN FROM THE AGENDA.**

27. Consider amending an ordinance pertaining to recreation, Section 19-2-240, Article 19-2, Chapter 19, Lawton City Code, 2005, by making violation of the ordinance unlawful and an offense, providing for a penalty for such violation and further providing for severability, and declaring an emergency. Exhibits: Ordinance 2009- ____.

Wilson stated in going through the current city code they noticed that the code states that a person at the lake that is involved in a vehicle accident with a boat has a duty to provide assistance to someone that is injured and also to provide contact information. The current code does not say that if a person fails to do this they are subject to criminal penalty. This provision will amend the code and a person may be charged in municipal court and subject to a fine.

Zarle stated that a lot of medical personnel will not help someone outside of the hospital because of legal ramifications.

Wilson stated this would be like the public in general rendering aid. He believes that state law says that if a Good Samaritan renders aid they are safe from prosecution. They are concerned with someone failing to help and failing to give out contact information.

MOVED by Zarle, SECOND by Drewry, to adopt **Ordinance 09-24**, waive the reading of the ordinance, read the title only and declaring an emergency. AYE: Haywood, Wells, Shoemate, Hanna, Drewry, Burk, Shanklin, Zarle. NAY: None. MOTION CARRIED.

(Title read by City Attorney)

Ordinance 09-24

An ordinance pertaining to recreation, amending Section 19-2-240, Article 19-2, Chapter 19, Lawton City Code, 2005, by making the violation of the ordinance unlawful and a criminal offense and providing for a penalty, providing for severability, and declaring an emergency.

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER

Burk stated he was involved in a traffic accident the previous week and he wanted to say that he is very proud to be a citizen of Lawton. There was quick response from the police and fire personnel, but he was most impressed by the military personnel who got out and stopped traffic. He thanked everyone for their calls and emails.

COL Lacey stated Brigadier General Roger Mathews, the Commandant of the Air Defense Artillery School, will represent GEN Vangel at the Lawton Rangers Rodeo.

Mitchell stated the City Council should have received an invitation for August 5th at 10:00 a.m. Goodyear is receiving an environmental award for making improvements to their overall operations to the plant.

Mayor Pro Tem Wells stated that there will be a departure ceremony at Fort Sill on Thursday at 9:00 a.m. at the polo field. He stated Friday there will be a retirement ceremony at Fort Sill at the old post quadrangle.

Mayor Pro Tem Wells suggested they start up the old ambulance committee and maybe rename it the Public Safety Committee. The police and fire departments need to look at their long term plans and he feels this committee

could do this.

Ihler stated that beginning tomorrow, crews will be delivering polycarts in several areas in town.

The Mayor and Council convened in executive session at 6:52 p.m. and reconvened in regular, open session at 7:16 p.m. Roll call reflected all members present.

BUSINESS ITEMS: EXECUTIVE SESSION ITEMS

28. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the pending damage claims of Paul Lopez, Damage Claim No. DC-2009-052, Jeremiah Lopez, Damage Claim No. DC-2009-053, Robert Lopez, Damage Claim No. DC-2009-054, Kristi Chavez, Damage Claim No. DC-2009-058, and Duane Green, Damage Claim No. DC-2009-059 and if necessary, take appropriate action in open session. Exhibits: None.

Wilson read the title of item #28. No action was necessary.

29. Pursuant to Section 307B.2, Title 25, Oklahoma Statutes, consider convening in executive session to discuss negotiations for a Collective Bargaining Agreement for FY 2009-2010 between the Police Union, IUPA, Local 24, and the City of Lawton, and take appropriate action in open session. Exhibits: None.

Wilson read the title of item #29.

MOVED by Drewry, SECOND by Shoemate, subject to ratification by the Police Union, move to approve the Police Union s July 21, 2009 package proposal. AYE: Hanna, Drewry, Burk, Shanklin, Zarle, Haywood, Wells, Shoemate. NAY: None. MOTION CARRIED.

There being no further business to consider, the meeting adjourned at 7:18 p.m. upon motion, second and roll call vote.

/s/ Douglas A. Wells
DOUGLAS A. WELLS., MAYOR PRO TEM
ATTEST:

/s/ Traci Hushbeck
TRACI HUSHBECK, CITY CLERK